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Before the
Federal Communications Commission
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 02-24 /
)	RM-10360
Table of Allotments,)	
FM Broadcast Stations.)	
)	
(Harrodsburg and Keene, KY))	
To: Mass Media Bureau (Policy & Rules)		

COMMENTS IN SUPPORT OF PROPOSED RULE MAKING

Mortenson Broadcasting Company of Central Kentucky, LLC, licensee of FM station WJMM-FM ("WJMM"), by its attorney, respectfully submits these comments in response to the Commission's Notice of Proposed Rule Making, DA-02-297, released February 8, 2002 ("NPRM"). The NPRM was issued in response to WJMM's petition for rule making requesting the substitution of Channel 257A at Keene, Kentucky, for Channel 257C3 at Harrodsburg, Kentucky. In support thereof, the following is shown.

WJMM supports the proposal to modify its community of license to Keene and to change its class, and incorporates by reference the showings made in its petition for rule making.

The NPRM requested comments in two areas: (1) the issue of community status of Keene, and (2) the public interest benefits of the change as the community of Harrodsburg will no longer be served by WJMM and the population in the loss area is greater than the population in the gain area.

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Community Status

As the NPRM recited, Keene has a long history as a community, dating back to 1794. Although its population has since diminished, it continues to demonstrate the indicia of community which the Commission has previously recognized. It has its own post office and zip code; a road sign designates the entrance to the community; there are businesses within its borders, and a number of residents have signed a petition attesting to their belief that Keene is a separate community. In addition, although not noted in the NPRM, but demonstrated by WJMM in its Petition for Rule Making, Keene appears on road maps as a separate and distinct community.

The NPRM did not indicate that it found the information which WJMM previously supplied on Keene's community status deficient in any way. WJMM believes that the facts it presented in its petition for rule making fully establishes that Keene meets the Commission's definition of a community.

The seminal case for consideration of whether a small population grouping qualifies as a community for allotment purposes is Semora, North Carolina, 5 FCC Rcd 934 (1990). There, the Commission stated that a locality which is neither incorporated nor listed in the U.S. Census will nevertheless satisfy the Commission's criteria as a community for allotment purposes if

residents of the locality are commonly regarded as a distinct group. This can be proven by the testimony of local residents or by objective indications of the existence of a common perception that a locality's populace constitutes a distinct 'geographical population grouping.' Examples of objective indications of community status include the existence of political, commercial, social and religious organizations and services in the

community. Another indication of community status is "whether the residents function as and conceive of themselves as residents of a community, around which their interests coalesce." (Citations omitted.)

WJMM has provided the Commission with both the testimony of local residents as well as a number of objective indications that Keene is a "distinct population grouping." Keene is not part of any other community and has similar characteristics of other communities which the Commission has found sufficient to constitute a community for allotment purposes, e.g. road signs, zip code, appearance on road maps.

Similar factual records led to determinations of community status in Willows and Dunnigan, CA, 10 FCC Rcd 11522 (1995), recon. denied 15 FCC Rcd 23852 (2000), in Cal-Nev-Ari, Boulder City, and Las Vegas, Nevada, 14 FCC Rcd 17153 (1999) and Yermo and Mountain Pass, CA, 45 RR 2d 58 (Br. Bur. 1979).

Public Interest Benefits

The NPRM expressed concern that WJMM's coverage of the Lexington-Fayette, Kentucky, Urbanized Area would be increased by the proposed change in community, although it would remain at less than 50%, the level at which a "Tuck" analysis¹ must be provided. In truth, the amount of the Urbanized area to be covered is less than 25%, as WJMM demonstrated in its petition for rule making. Pursuant to Lincoln and Sherman, Illinois, DA-687, released March 22, 2002 (Allocations Branch), "the law is well settled on this subject." When, as is the case here, the proposed community is not

¹ See, Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

part of an urbanized area, and less than 50% of the urbanized area will receive a city-grade signal, no further investigation is undertaken.

The provision of a first local transmission service to a community is the third priority under Section 307(b), and equal in importance to the second priority. Other public interest factors, which includes additional service to well-served areas, falls under the fourth priority. In Willows and Dunnigan, CA, supra, the Commission recognized this principle in granting a change in the community of license of FM station KQSC from Willows to Dunnigan. The Commission there stated

[I]n determining whether a proposed reallocation represents a preferential arrangement of allotments, we compare the existing to the proposed arrangement of allotments using our FM allotment priorities. In making this analysis, we note that Dunnigan would receive a first local aural transmission service, which is priority three. On the other hand, Willows already has a local aural transmission service and, therefore, does not trigger priority three. Rather, it falls under priority four, other public interest factors. Under this priority, retention of KQSC(FM) in Willows would constitute its first local night-time transmission service. In balancing the merits of these proposals, we find that the reallocation to Dunnigan should be made because it triggers the higher allotment priority of a first local transmission service. (Footnotes omitted.)

WJMM's proposal is nearly identical with the one approved for KQSC(FM). In both cases, the proposed community, although less than 1,000 in population, was determined to be a community for allotment purposes. In both cases, the existing community of license will continue to have a local service (daytime AM) of its own.² The

² WHBN(AM), Harrodsburg, KY, operates with 46 watts at night.

Commission could justifiably adopt the same language here, merely changing the names of the communities involved.

The same principle was applied in Camdenton and Laurie, Missouri, 16 FCC Rcd 8917 (Allocations Branch 2001), in which the Commission chose a new service to Laurie, population 507, over a second service, albeit the first commercial service, at Camdenton. The decision there was based solely on the fact that a first local service, priority 3, is a higher priority than is an additional service at another community.

The NPRM also stated that Harrodsburg would not receive a signal from WJMM once its city of license is changed. That is incorrect. The proposed allotment reference site is 27 km from Harrodsburg. In general, the Commission assumes a 60 dBu signal for a Class A station extends 28 km from the transmitter site. Moreover, if the specific terrain is considered, the 60 dBu signal will extend for 30.7 km in the direction of Harrodsburg. In either event, Harrodsburg will continue to receive service from WJMM.

The NPRM noted that a larger number of people reside in the "loss area" than reside in the "gain area" which would result from the proposed change. It acknowledged, however, that all affected areas are well-served, with at least five full time services.

This difference in coverage of well-served areas is not decisionally significant, particularly when compared to the fact that Keene will be obtaining its first local service, a service which WJMM's petition demonstrated is greatly needed. Lincoln and Sherman, Illinois, supra.


It has long been Commission policy that a difference in population coverage, when all areas are well served, is of minor importance. Naguabo Broadcasting Company, 7 FCC Rcd 1696, 1697 (1992). Greater coverage of an already well-served area, a consideration falling within the fourth priority of Section 307(b), cannot overcome the greater public benefit stemming from satisfaction of the third priority, first local service. Willows and Dunnigan, CA, supra.

WJMM intends to apply for a construction permit to implement the change in its community of license to Keene promptly upon the effectiveness of its requested license modification, and to construct promptly upon grant of its application.

In view of the above, the Commission should amend Section 73.202(b) as requested herein and modify the facilities of FM station WJMM-FM accordingly.

Respectfully Submitted,

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By 
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its Attorney

April 1, 2002

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